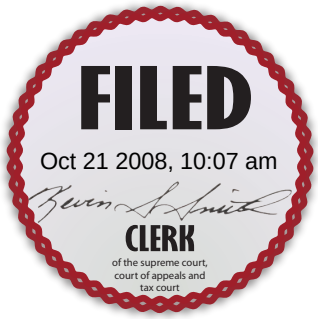

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IN THE
COURT OF APPEALS OF INDIANA

DONALD LEE SELLECK,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 12A05-0805-CR-287
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE CLINTON CIRCUIT COURT
The Honorable Linley E. Pearson, Judge
Cause No. 12C01-0709-FB-233

October 21, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Following his convictions for Class B felony Burglary[1] and Class D felony Theft,[2] Appellant/Defendant Donald Lee Selleck appeals his aggregate sentence of fourteen years of incarceration, with two years suspended to probation and one to be served in community corrections. Selleck contends that the trial court improperly found aggravating and mitigating circumstances and also improperly balanced them. Selleck also contends that his three-year maximum sentence for theft is inappropriate. We affirm.

FACTS AND PROCEDURAL HISTORY

Either late in the evening of September 10, 2007, or early in the morning of the 11th, Selleck, with the assistance of K.M., kicked in the door of Melissa Harris, who lived in the other side of his Frankfort duplex. K.M., who was under eighteen at the time, was dating Selleck's niece. Selleck and Harris had recently argued after Harris took the side of Selleck's mother in a family argument, and Selleck had been overheard saying that he would exact revenge on Harris. After gaining entry to Harris's residence, Selleck removed several items, including two audio systems, video game systems and games, CD's, and DVD's, most of which were later found in his residence.

On September 11, 2007, the State charged Selleck with Class B felony burglary and Class D felony theft. After a jury found Selleck guilty as charged, the trial court sentenced him to fourteen years of incarceration for burglary, two of which were suspended to probation and one of which was to be served through Clinton County

[1] Ind. Code § 35-43-2-1 (2007).

[2] Ind. Code § 35-43-4-2(a) (2007).

Community Corrections. The trial court also sentenced Selleck to three years of incarceration for theft, to be served concurrently with his burglary sentence. In sentencing Selleck, the trial court considered that Selleck was married with children and had child support obligations to other children, Selleck had a significant criminal history, past attempts at rehabilitation had failed, he could have been found to be a habitual offender, and he enlisted the aid of a juvenile to commit his crimes.

DISCUSSION AND DECISION

I. Whether the Trial Court Abused its Discretion in Sentencing Selleck

Under Indiana's current sentencing scheme, "the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007). We review the sentence for an abuse of discretion. *Id*. An abuse of discretion occurs if "the decision is clearly against the logic and effect of the facts and circumstances." *Id.*

A trial court abuses its discretion if it (1) fails "to enter a sentencing statement at all[,]" (2) enters "a sentencing statement that explains reasons for imposing a sentence–including a finding of aggravating and mitigating factors if any–but the record does not support the reasons," (3) enters a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration," or (4) considers reasons that "are improper as a matter of law." *Id.* at 490-91. If the trial court has abused its discretion, we will remand for resentencing "if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record." *Id*. at 491. However, under the new statutory scheme, the

relative weight or value assignable to reasons properly found, or to those which should have been found, is not subject to review for abuse of discretion. *Id.*

Selleck contends that the trial court failed to articulate specific reasons why the factors it considered were aggravating or mitigating and that it failed to demonstrate on the record that it balanced the factors that it considered against one another. The trial court, however, is no longer required to specifically find aggravating or mitigating circumstances, only "reasonably detailed reasons" for the sentence. *Id.* at 490, 491. Selleck does not claim that the trial court failed in this regard. Even in the absence of specific labels for the factors the trial court considered, it seems clear that the trial court considered Selleck's family obligations to be mitigating and all other factors to be aggravating. Moreover, to the extent that Selleck contends that the trial court improperly weighed the various factors it considered, we no longer review the relative weight assigned to factors by the trial court, nor do we revisit its balancing of them. *Id.* at 491. The trial court did not abuse its discretion in sentencing Selleck.

II. Whether Selleck's Theft Sentence is Appropriate

Selleck also contends that his maximum sentence of three years of incarceration for Class D felony theft is inappropriate. We "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). "Although appellate review of sentences must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise

sentences when certain broad conditions are satisfied." *Shouse v. State*, 849 N.E.2d 650, 660 (Ind. Ct. App. 2006), *trans. denied* (citations and quotation marks omitted).

Selleck notes that "the maximum sentence enhancement permitted by law … should … be reserved for the very worst offenses and offenders" and contends that his theft does not qualify. *Bacher v. State*, 686 N.E.2d 791, 802 (Ind. 1997). We, however, have observed that

> [i]f we were to take this language literally, we would reserve the maximum punishment for only the single most heinous offense. In order to determine whether an offense fits that description, we would be required to compare the facts of the case before us with either those of other cases that have been previously decided, or–more problematically–with hypothetical facts calculated to provide a "worst-case scenario" template against which the instant facts can be measured. If the latter were done, one could always envision a way in which the instant facts could be worse. In such case, the worst manifestation of any offense would be hypothetical, not real, and the maximum sentence would never be justified.
>
> This leads us to conclude the following with respect to deciding whether a case is among the very worst offenses and a defendant among the very worst offenders, thus justifying the maximum sentence: We should concentrate less on comparing the facts of this case to others, whether real or hypothetical, and more on focusing on the nature, extent, and depravity of the offense for which the defendant is being sentenced, and what it reveals about the defendant's character.

Brown v. State, 760 N.E.2d 243, 247 (Ind. Ct. App. 2002).

While it is certainly true that we can imagine a worse theft committed by a worse criminal, we think Selleck's character and the nature of the offense justify a maximum sentence. Selleck's criminal history is quite extensive, given his age, and his numerous contacts with the criminal justice system have not caused him to reform himself. Selleck, who was twenty-seven years old at sentencing, has prior felony convictions for Class C felony forgery, Class D felony theft, and two counts of Class D felony intimidation.

Additionally, Selleck has prior convictions for Class B misdemeanor leaving the scene of an accident, Class C misdemeanor operating a vehicle without ever having received a license, Class A misdemeanor assisting a criminal, Class A misdemeanor domestic battery, three counts of Class B misdemeanor criminal mischief, Class A misdemeanor battery, Class A misdemeanor operating a vehicle while intoxicated, and Class A misdemeanor conversion. Selleck has violated the terms of probation three times and has been sentenced to the Department of Correction, jail, home detention, work release, formal and informal probation, community service, and road crew, and has been ordered to pay restitution and fines. Under the circumstances, a conclusion that less-harsh measures have proven ineffective in curtailing Selleck's criminal activity is justified. As for the nature of the offense, we also believe that it is worse than the typical theft, as it was the underlying felony to the burglary of a dwelling. In light of Selleck's character and nature of his offense, we cannot say that his maximum three-year sentence for theft was inappropriate.

The judgment of the trial court is affirmed.

RILEY, J., and BAILEY, J., concur.